

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Promoting Diversification of Ownership) MB Docket No. 07-294
In the Broadcasting Services)

To: Secretary, Federal Communications Commission
Attention: The Commission

COMMENTS
OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

The Regents of the University of California (“the Regents” or “the University”), on behalf of its San Diego campus (“UCSD”), by its attorneys, submits these comments responsive to the *Sixth Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, FCC 12-166 (released January 3, 2013) (“*Six Further Notice*”), proposing, among other things, elimination of the “Special Use” FRN for attributable individuals that are reported on FCC ownership reports.

INTRODUCTION

The University is a public institution of higher education and the licensee of Class A television station K35DG, La Jolla, California (Facility ID No. 66321), which is operated by the University's San Diego campus. The University asks the FCC to continue to permit "Special Use" FRNs. These Special Use FRNs are particularly beneficial to licensees like the Regents – whose attributable individuals are not in fact "owners", but rather serve by virtue of their state governmental or public university roles pursuant to a state constitution or other state authority

and/or from whom the University is unable to obtain social security number-based or CORES-based FRNs.

COMMENTS

Class A station K35DG is located in La Jolla, California and serves the greater San Diego metropolitan area. K35DG has always been operated by the University as a noncommercial station associated with the University's San Diego campus. In keeping with the University's general mission to educate, inform, and enrich the lives of California residents, K35DG provides educational and informative noncommercial programming via regionally-focused, locally-produced television programs designed to appeal to a wide cross-section of local citizens. However, there is not a noncommercial "reservation" for Class A (or LPTV) stations, and Class A stations that operate noncommercially (like K35DG) are nonetheless subject to the same Form 323 Ownership Report requirements as commercial stations, rather than the Form 323-E for noncommercial station Ownership Reports. Therefore, the University has been using "Special Use" FRNs for some of the attributable individuals on the required Form 323 Ownership Reports for K35DG, specifically in situations in which the University has been unable to obtain an FRN from the attributable individuals.

The University fully supports the Commission's goal of promoting diversity in broadcast programming. Indeed, a primary goal of K35DG is to produce and air diverse programming. The University also acknowledges that diversity in broadcast station ownership may affect programming and help achieve that goal. Finally, the University understands the Commission's desire to obtain accurate information on diversity of ownership of broadcast stations.

However, the concepts of "ownership" applicable to commercial broadcast stations have no applicability to state university stations, such as the University's K35DG, which are not

privately-owned. Instead, the University is governed by its Board of Regents, a 26-member board, established by Article IX, Section 9 of the California Constitution. Eighteen (18) Regents are appointed by the Governor of the State of California. One Regent is a currently-matriculated student, appointed by the Regents to a one-year term. Seven (7) of the Regents are ex-officio members, including the Governor of the State of California, Lieutenant Governor, Speaker of the Assembly, Superintendent of Public Instruction, President and Vice President of the University's Alumni Associations, and the University's President.

Because the University's governing board members are elected or appointed pursuant to the California Constitution, the University's K35DG is licensed to a public, non-profit, non-stock-holding entity, whose governing board members (the Regents) serve per the California Constitution – some by virtue of gubernatorial appointment or elected public office and others due to their University roles or offices. The University neither issues stock nor has stockholders. Thus, the Regents and its officers are not broadcast “owners” from whom the FCC can discern trends in media ownership. Indeed, including these non-owners' data improperly skews the FCC's minority and female ownership data, instead of making the data more accurate.

Moreover, the Regents lack the authority to compel its board members to obtain SSN-based or CORES-based FRNs for the purposes of reporting their gender and minority status. As noted, these individuals are either publicly-elected or appointed officials per the California Constitution. K35DG can only request information, then report what individual Regents choose to disclose publicly about their identities. Thus, in some cases, the University may not have the essential information on gender or minority status or may be unable to obtain the necessary FRN for each Regent.

In such limited, but thorny, circumstances, the University has resorted to the “Special Use” FRNs. Making it impossible for the University to file its Ownership Report without an FRN (by having the electronic filing system utterly reject a report where only a Special Use FRN is available) would unfairly penalize the University. Such a refusal would, presumably, place the University and its station in a non-compliant status with the Commission – while doing nothing to further the goal of promoting diversity in broadcasting.

CONCLUSION

Due to the circumstances described above, the FCC should permit the Regents, along with other state-owned licensees and/or licensees operating on a nonprofit noncommercial basis the option of: (1) continuing to utilize the Special Use FRNs or (2) filing FCC Ownership Reports for its stations using the Form 323-E (which currently does not require FRNs for individual board members).

There is nothing to be served (and much to be gained) by allowing Special Use FRNs in appropriately limited situations. The Regents submit that its circumstances, and others like it, are limited circumstances appropriate for Special Use FRNs. The University respectfully requests that the FCC continue to permit use of Special Use FRNs for K35DG’s FCC Ownership Reports.

Respectfully submitted,

REGENTS OF THE UNIVERSITY OF CALIFORNIA

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